

ORIGINAL

IN THE SUPREME COURT OF OHIO

MARY H. WILLIAMS,

Plaintiff-Appellee,

v.

DIRECTOR, OHIO DEPARTMENT OF
FAMILY SERVICES, et al.,

Defendant-Appellee.

Case No. 2010-1166

On Appeal from the Cuyahoga
County Court of Appeals
Eights Appellate District, Court of
Appeals

Case No. 93594

FILED

DEC 10 2010

CLERK OF COURT
SUPREME COURT OF OHIO

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STATEMENT OF FACTS

A. STATEMENT OF THE CASE

The instant case is before this Honorable Court upon the discretionary appeal of Appellant Bridgeway, Inc., which was accepted on Proposition of Law No. 1. The issue accepted for decision is whether an employee who fails to obtain a license or certification that was a condition of employment, as verified by the letter of appointment signed by the employee at the time of hire, is discharged for just cause in connection with work within the meaning of Ohio Revised Code Section 4141.29(D)(2)(a).

This is an issue of first impression for this Honorable Court involving whether an employee who fails to obtain a license or certification that was a condition of employment, as verified by the letter of appointment signed by the employee at the time of hire, is discharged for just cause in connection with work within the meaning of Ohio Revised Code Section 4141.29(D)(2)(a).

Claimant-Appellee Mary Williams ("Claimant") had applied for unemployment benefits after separation from employment with Appellant Bridgeway, Inc. ("Employer"). The initial determination denied the claim on the ground Claimant was discharged with just cause for not obtaining a LISW (Licensed Independent Social Worker) certification required to perform her position of employment, which requirement Claimant was made aware of at the time of hire. The Director's re-determination affirmed the initial determination that Claimant was discharged with just cause for not obtaining and/or maintaining the required license. Claimant then appealed to the Unemployment Compensation Review Commission. A hearing officer disallowed the claim, finding that Claimant was discharged for just cause in connection with work. The Review Commission denied Claimant's request for further review.

On appeal, the Cuyahoga County Court of Common Pleas affirmed the Review Commission's decision. The trial court found that Claimant was unsuitable and/or unfit to continue in her position of employment due to her lack of LISW certification. The trial court's opinion noted that at the time of hire, Claimant acknowledged the requirement to obtain the LISW certification, and failed the relevant examination and was therefore discharged from her position. The trial court further noted that it is not uncommon for employers to increase their educational pre-requisites in order to either be hired or maintain employment, and that in the present case Claimant was aware she had fifteen months to obtain the LISW certification, but failed to do so without justification. Hence, the trial court held that the Claimant's discharge disqualified her from entitlement to benefits.

The Cuyahoga County Court of Appeals reversed by concluding that Claimant had performed the requirements of her position without the license, and was therefore not disqualified from benefits. Additionally, the court of appeals found that a comparison to two other employees showed that they had served in the same capacity for several years without being required to obtain such a license.

B. STATEMENT OF FACTS

Employer is a community mental health center. Claimant was initially hired on October 30, 2006, as a Residential Social Worker. She was then promoted to Residential Program Manager in January 2007. At the time she began working as a Residential Social Worker, Claimant signed a Letter of Appointment dated January 17, 2007, which stated that Claimant will be required to complete her LISW licensure within fifteen months (by May 2008), which is a requirement for this position. See Letter of Appointment at A – 30. Claimant signed the letter acknowledging that she had read the relevant position description and accepted the terms and

conditions of employment as stated. (Transcript of Review Commission Hearing ("Tr.") at 23.) Subsequently, Employer granted Claimant a one month extension to take the test due to a health issue. (Tr. at 12.) Claimant took the LISW test in early June 2008, and did not pass. (Tr. at 12, 20.) She was not eligible to re-take the test for at least 90 days. (Tr. at 14.)

Prior to Claimant's conditional promotion to the position of Residential Program Manager, there was one other Residential Program Manager who did not have the LISW qualification. (Tr. at 19.) This individual, Marie Burkett, is both a Registered Nurse and a licensed professional counselor, and has held the position for approximately sixteen (16) years. (Tr. at 17, 19.) The Residential Program Director, Cheryl Lydston, who was Claimant's immediate supervisor, did not have the LISW qualification at the time of her promotion to Director in 2006, but was both expected and in the process of achieving this qualification. (Tr. at 13-14.) She obtained the LISW in 2007. (*Id.*) Prior to her promotion to Director, Ms. Lydston had worked as a Program Manager for approximately five (5) years without a LISW certification. (Tr. at 16.)

Claimant was discharged on June 20, 2008, because she had not obtained a LISW certification that was the condition of her employment as a Residential Program Manager. (Tr. at 11; Letter of Termination at A – 31.) Both the Review Commission and the trial court found that Claimant's discharge was for just cause because she clearly knew that she was required to obtain the LISW certification as a condition of her employment, yet failed to satisfy this condition of employment. Both the Review Commission and the trial court further found that although Employer had two other Residential Program Managers who had worked without the LISW certification, it is reasonable and common for employers to increase job requirements in order for employees to be hired or maintain employment, and that in the present case Claimant

knew she had fifteen months to obtain the certification, but failed to do so without justification. The Court of Appeals disagreed, finding that Employer's policy was not evenly applied when comparing Claimant's required qualification to Ms. Burkett and Ms. Lydston.

ARGUMENT

PROPOSITION OF LAW NO. 1: AN EMPLOYEE WHO FAILS TO OBTAIN A LICENSE OR CERTIFICATION THAT WAS A CONDITION OF EMPLOYMENT, AS VERIFIED BY THE LETTER OF APPOINTMENT SIGNED BY THE EMPLOYEE AT THE TIME OF HIRE, IS DISCHARGED FOR JUST CAUSE IN CONNECTION WITH WORK WITHIN THE MEANING OF OHIO REVISED CODE SECTION 4141.29(D)(2)(A).

A. The Standard of Review and Concept of Fault

The decisions of the Review Commission and the trial court correctly disqualified Claimant from benefit rights under R.C. 4141.29(D)(2)(a). Under this statute, an employee who has been discharged for just cause in connection with work is ineligible for unemployment compensation benefits. R.C. 4141.29(D)(2)(a). Fault is the essential element of a just cause termination. See *Tzangas, Plakas & Mannos v. Ohio Bur. of Employ. Servs.* (1995), 73 Ohio St.3d 694, 698, 653 N.E.2d 1207. In *Tzangas* this Court specifically instructed: "If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause." *Id.* In just cause determinations, a court may not substitute its own judgment for that of the hearing officer in considering whether the just cause determination was unlawful, unreasonable, or against the manifest weight of the evidence. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41, 45, 430 N.E.2d 468; *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159, 161, 463 N.E.2d 1280. Accordingly, a hearing officer's finding that an employee was terminated for just cause is lawful and not against the

manifest weight of the evidence if it is supported by some evidence in the record. *Irvine v. Unemployment Comp. Bd. Of Review* (1985), 19 Ohio St.3d 15, 18-19, 482 N.E.2d 587.

B. Claimant Was At Fault In Connection With Her Discharge.

In the present case, Claimant was discharged for just cause due to her failure to obtain a LISW certification within the time spelled out in the letter of appointment which she signed, plus the one month extension. Based on the particular facts of the present case, Employer has been reasonable in finding fault on behalf of Claimant. This fault by Claimant renders her termination as one for just cause, thereby precluding entitlement to unemployment compensation benefits.

The evidence in the record conclusively proves that Claimant was discharged for just cause. First, according to the testimony of Claimant's supervisor, Cheryl Lydston, upon Claimant's hire she was required to obtain a LISW certification within fifteen months. Claimant was specifically aware of this condition of her employment, per her signature on the letter of appointment. Therefore, Claimant was hired conditionally upon her obtaining this license within fifteen months.

Second, despite being aware of this requirement of her employment, Claimant did not meet this requirement which involved passing a state test within the specified time period. Hence, her employment was terminated because she failed to meet this specific condition of her employment. Claimant's failure to obtain this certification was the sole reason for her termination of employment.

Third, as confirmed by the testimony of Employer's Human Resource Manager, Molly Matejka, the letter signed by Claimant specifically stated that the failure to complete the LISW licensure by May of 2008 would make her ineligible to keep her position.

Fourth, Claimant herself acknowledged and conceded that her position with Employer was conditional upon her obtaining a LISW license. However, she chose to take the LISW exam at the very end of the required term, and then failed the test. Therefore, she did not satisfy the condition of her employment.

In sum, Claimant's failure to comply with the condition of her employment, as outlined above, constitutes fault on her part which shows that her termination was for just cause. Fault is established by Claimant's failure to comply with the requirement plainly set forth in her letter of appointment to obtain her LISW certification within fifteen months. Hence, the evidence overwhelmingly shows the essential component of fault necessary for a just cause termination.

C. The Court Of Appeals Incorrectly Created A New Standard Which Focused Upon Alleged "Disparate Treatment" By A Comparison To Other Employees.

In this case, the court of appeals' judgment directly conflicts with the prior precedent established in *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Servs.* (1995), 73 Ohio St.3d 694, which confirmed the standard of "fault" applicable to Ohio unemployment compensation claims. The judgment of the court of appeals is also in conflict with a prior decision of the Fourth Appellate District in *Williams v. Security Armored Cars Serv., Inc.* (July 12, 1985), 4th Dist. No. 1531, 1985 W.L. 9390.

The judgment of the court of appeals below adversely impacts the holding of the *Tzangas* case, in that the court of appeals unnecessarily and inaccurately compared Claimant to the two other employees. However, these two other employees were hired long before Claimant, and were not required to obtain an LISW licensure to qualify for their positions. Thus, they were not similarly situated to Claimant, in that they both held their positions for multiple years, with one being an RN/LPC, and the other having far greater experience in this type of work.

By contrast, Claimant's letter of appointment to her position as a Program Manager with Employer explicitly required her to obtain an LISW license within a certain period of time of her hire date. This was a condition of employment which Claimant failed to meet, and consequently her employment was terminated. Employer submits to this Court that it has both a right and a responsibility to review and upgrade position qualifications within its organization.

Here, the court of appeals unnecessarily engaged in a comparison analysis, because Claimant was not similarly situated to the other employees. Furthermore, this case should have been decided on the sole ground that fault was established when Claimant did not obtain the LISW. This particular evidence of fault was improperly ignored by the court of appeals.

The only valid comparison that could have been drawn by the court of appeals would have been between Claimant and others like her who were hired when this requirement was made a condition of employment and who also failed to comply with this requirement. Instead, the court of appeals chose to make an invalid comparison, and in doing so failed to apply the proper standard of fault provided by the *Tzangas* case.

Hence, the court of appeals in effect created a new standard which looks at alleged "disparate treatment" by a comparison to other employees who did not even have the same requirement or condition of employment. This type of standard is irrelevant and inapplicable to unemployment compensation cases. Rather, as this Court has previously instructed, the proper analysis should be on whether there is evidence of fault on the part of this particular employee.

The judgment of the court of appeals is contrary to both the *Tzangas* case and the standard of "just cause" that has been previously adopted and employed for many years in Ohio unemployment cases. Moreover, the underlying objective of the Ohio Unemployment Compensation Act would be severely compromised or undermined if the court of appeals

judgment below is allowed to stand. This judgment is directly contrary to the current case law, the rules pronounced in the *Tzangas* case, and the stated purpose of the Act.

D. Prior Ohio Appellate Decisions Are Consistent With the Decisions Of The Review Commission And The Trial Court.

The court of appeals decision in the present case is inconsistent with its own prior decision in *Robertson v. Ohio Dep't of Job & Family Servs.*, 8th Dist. No. 86898, 2006-Ohio-3349, 2006 WL 2243136. In that case, the Eighth District Court of Appeals held that an employee's failure to obtain a security license which was a condition of her employment provided the fault necessary to disqualify her from unemployment compensation benefits under Ohio law. In particular, the *Robertson* opinion states:

Appellant was at fault for not obtaining her security license that she knew she needed to continue her employment with ICSS. Accordingly, we find that there was competent, credible evidence to support the Commission's conclusion that appellant was discharged for just cause.

See *Robertson* at ¶ 23.

Robertson directly supports the positions of the Employer and the Director in the present case. As in *Robertson*, Claimant here was at fault for not obtaining her LISW certification that she knew she needed to continue her employment with Employer. This failure supplies the fault which is disqualifying. In essence, Claimant was at fault for not complying with her letter of appointment to obtain the LISW certification, and this failure shows that Claimant was at fault in connection with her discharge. The only person at fault for Claimant's discharge was the Claimant herself; Claimant cannot shift this blame to anyone else.

Additionally, in *Williams v. Security Armored Car Services, Inc.* (July 12, 1985), Ohio App. 4 Dist. No. 1531, 1985 WL 9390, unreported, the Fourth Appellate District considered a discharge of an employee who failed to obtain a Missouri chauffeur's license. The employee

argued that he made every reasonable effort to obtain the license, but failed due to circumstances beyond his control. The Fourth Appellate District held that the employee's difficulties did not excuse his failure to obtain the license as required by his employer, who notified the employee of this requirement at the time of his hire. In the instant case, the *Williams* case points to the conclusion that Claimant's failure to obtain her LISW license establishes fault on her part and, therefore, her resulting discharge was for just cause in connection with work.

E. Claimant's Anticipated Arguments Are Without Merit.

Based upon Claimant's arguments in the courts below, it is anticipated that Claimant will contend (1) she was not at fault in connection with her discharge; (2) Employer did not require two other managers to obtain a LISW certification; and (3) cases from other jurisdictions are supportive of her position.

With regard to the issue of fault, in a nutshell Claimant here failed to obtain her LISW certification within the required time period, despite having sixteen months in which to do so. Prior to obtaining her position, Claimant was specifically aware that she was required to obtain her LISW certification, and was also aware that failure to do would result in termination.

With regard to the issue of other employees, this is not a valid or relevant inquiry. The qualifications and experience of those employees were substantially greater than Claimant's; hence, the attempt by the court of appeals to compare Claimant to these other employees was not sound or equitable. Further, the sole focus of the present case should be whether Claimant herself was discharged for just cause for her own failure to comply with the condition of her employment. There is no question that Claimant was aware that her employment was conditional on obtaining her LISW certification. The record fully establishes that Claimant did not meet this requirement. Hence, Claimant was at fault in connection with her discharge.

Regarding the requirement for the LISW certification, this certification is a reasonable and valid requirement for the position. Further, as pointed out by the hearing officer and the trial court, it is not uncommon for employers to increase the educational pre-requisites in order for an employee to be either hired or maintain employment. Here, at the time she applied for the position, Claimant was fully aware that she had fifteen months to obtain the LISW certification. The bottom line is that Claimant was aware of the specific condition of her employment, which she failed to meet. The trial court and hearing officer were both absolutely correct in finding that she failed to do so without justification. Consequently, she is at fault regarding her discharge.

With regard to cases from other jurisdictions, Claimant's anticipated arguments and citations to out-of-state cases are completely irrelevant to the issue in this case. In the present case, the only relevant issue is whether Claimant's discharge was for just cause under the standard set forth in R.C. 4141.29(D)(2)(a). Cases from other jurisdictions have no controlling or precedential value to this Honorable Court, and it is anticipated that this Court will find that such cases also did not address the same situation presented in the instant case.

CONCLUSION

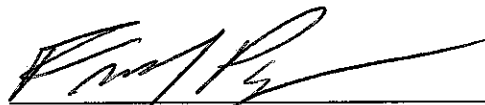
In the present case, Claimant was discharged for just cause due to her failure to obtain the license or certification within a certain period of time, as spelled out in the letter of appointment which she signed. When she was offered the position, Claimant knew that failure to obtain an LISW would result in termination. Simply stated, Claimant's failure to comply with the express condition of her employment constitutes fault on her part which supplies just cause for her termination.

Ohio employers must be able to provide and rely upon reasonable conditions of employment such as the licensing and certification requirements in the present case, and here

Claimant's failure to comply with such a requirement rendered her discharge to be disqualifying under the Act. Further, all Ohio employers must be able to change and/or modify job requirements in order to ensure that their employees have the proper credentials for their positions of employment.

An employee who fails to obtain a license required to maintain his or her position of employment is discharged for just cause in connection with work and should not qualify for benefits. This is consistent with the purpose and current application of the Ohio Unemployment Compensation Act, which was not intended to be a form of insurance for employees who do not satisfy reasonable requirements in order to keep and maintain their employment. In the instant case, the decisions of the Review Commission and the trial court which disqualified Claimant from benefits were correct and appropriate. Therefore, Employer respectfully requests this Honorable Court to reverse the judgment of the Eighth District Court of Appeals and to reinstate the judgment of the Cuyahoga County Common Pleas Court.

Respectfully submitted,



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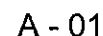
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APPENDIX

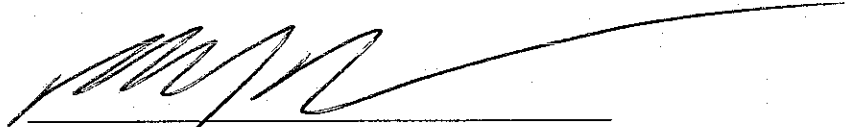


NOTICE OF APPEAL OF DEFENDANT-APPELLANT BRIDGEWAY, INC.

Defendant-Appellant Bridgeway, Inc. hereby gives Notice of Appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals Case No. CA 09-93594 on May 20, 2010, a copy of which judgment is attached hereto.

This case is one of public or great general interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Fred J. Pompeani', is written over a horizontal line.

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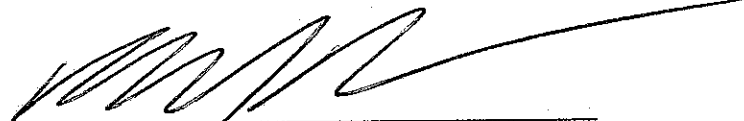
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A - 03

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93594

MARY H. WILLIAMS

PLAINTIFF-APPELLANT

vs.

**DIRECTOR, OHIO DEPARTMENT OF JOB AND
FAMILY SERVICES, ET AL.**

DEFENDANTS-APPELLEES

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-681453

BEFORE: McMonagle, J., Kilbane, P.J., and Jones, J.

RELEASED: May 20, 2010

JOURNALIZED:

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ANNOUNCEMENT OF DECISION
PER APP.R. 22(B) AND 26(A)
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MAY 20 2010

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY G. Fuerst DEP.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

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ATTORNEYS APPEAL TAXED

CHRISTINE T. McMONAGLE, J.:

Plaintiff-appellant Mary H. Williams appeals the trial court's judgment affirming the Review Commission's decision in this administrative appeal after finding that the Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence. We reverse and remand.

In October 2006, Williams began working for defendant-appellee Bridgeway, Inc. as a residential social worker. In January 2007, Williams was promoted to a residential program manager. The promotion was conditioned upon Williams becoming a licensed independent social worker ("LISW") within 15 months of the promotion, or by May 2008. Williams signed a letter of appointment, which included the licensing requirement.

Williams was scheduled to sit for the exam in April 2008, but because of a health issue she received an extension until June 2008 to take the exam. She did not pass the exam, however,¹ and was terminated from Bridgeway for failing to become a LISW within 15 months.

Williams filed for unemployment compensation. The Director disallowed her claim, finding that she had been discharged for just cause. Williams appealed, and on redetermination, the Director affirmed the initial

¹She was not eligible to take the test again for 90 days.

determination. Williams appealed again and the case was transferred to the Review Commission.

A hearing officer from the Commission affirmed the Director. The officer found that under the letter of appointment, Williams stipulated that she was required to pass a LISW exam within 15 months, and that passing the exam was a term and condition of employment. The officer further noted that Williams had taken the exam at the end of the 15-month term, failed it, and did not have sufficient time to retake it. Moreover, the officer noted, in response to Williams's claim that she was treated differently from two other residential program managers who did not have the LISW certification, that one had been in the position for 13 years and the other for 5 years. The officer justified the differing requirements stating that, "[i]t is not uncommon to have employers increase the educational pre-requisites in order to be hired or maintain employment."

Williams filed a request for review before the Unemployment Compensation Review Commission, but the request was denied and she appealed to the common pleas court. The court found that the decision of the Commission was not unlawful, unreasonable or against the manifest weight, and affirmed the Commission's decision. She now raises two assignments of error for our review.

In her first assignment, Williams contends that the Review Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. In the second assignment, she contends that the Review Commission's was against the manifest weight of the evidence because Bridgeway's licensing requirement was not fairly applied. We consider these two interrelated assignments of error together.

R.C. 4141.282(H) sets forth the scope of review in unemployment compensation cases. Pursuant to this section, the trial court may only reverse the Review Commission's decision if it is "unlawful, unreasonable, or against the manifest weight of the evidence." *Id.*; see, also, *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 696, 653 N.E.2d 1207. When we review the trial court's decision, we apply the same standard. *Id.* The Ohio Supreme Court has explained that the resolution of factual questions is chiefly within the Review Commission's scope of review. *Id.*, citing *Irvine v. Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587, 590. If the reviewing court finds evidence in the record to support the findings, then the court cannot substitute its judgment for that of the Review Commission. *Durgan v. Ohio Bur. of Emp. Servs.* (1996), 110 Ohio App.3d 545, 551, 674 N.E.2d 1208, citing *Wilson v. Unemployment Comp. Bd. of Rev.* (1984), 14 Ohio App.3d 309, 310, 471 N.E.2d 168.

The purpose of the Unemployment Compensation Act is to provide financial assistance to persons without employment through no fault of their own. *Salzl v. Gibson Greeting Cards, Inc.* (1980), 61 Ohio St.2d 35, 39, 399 N.E.2d 76. R.C. 4141.29 establishes the criteria for eligibility for unemployment compensation benefits. Pursuant to R.C. 4141.46, this provision must be liberally construed. Under R.C. 4141.29(D)(2)(a), no individual may be paid benefits if the individual has been discharged for just cause in connection with the individual's work.

"Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine*, supra at 17. The determination of whether "just cause" exists depends upon the unique considerations of each particular case and each case must be considered on its particular merits. *Id.*

Some courts have recognized that "[t]here is a distinction between the violation of a company rule or policy, which may warrant discharge of an employee, and 'the further degree of misconduct or fault required on the part of the employee to justify a denial of unemployment benefits.'" *James v. Ohio State Unemployment Rev. Comm.*, Franklin App. No. 08AP-976, 2009-Ohio-5120, ¶12, quoting *Adams v. Harding Machine Co., Inc.* (1989), 56 Ohio App.3d 150, 155, 565 N.E.2d 858. In *Adams*, the Third Appellate District recognized the

distinction made by the review board between the “‘cause’ necessary for discharge of the plaintiff under the (implied) employment contract in the case * * * and the ‘just cause’ necessary to determine eligibility for unemployment compensation benefits[.]” The court cited to the review board’s decision, which found that, although the employer had the right to discharge the claimant, the action was excessive and the claimant was “discharged without just cause in connection with work within the meaning of * * * [R.C. 4141.29(D)(2)(a)].” *Id.* at 155-56.²

This court has also recognized the distinction. For example, in *Case W. Res. Univ. v. Director, Ohio Dept. of Job & Family Servs.*, Cuyahoga App. No. 80593, 2002-Ohio-4021, this court, in addressing “just cause” under the unemployment compensation benefits statute, stated that “[t]he relevant Ohio statute provides that no individual may be paid benefits when that individual

²See, also, *Coey v. Burwell Nurseries* (1965), 2 Ohio App.2d 102, 105, 206 N.E.2d 577 (the court determined the employer had the right to discharge the claimant, but also determined the claimant did nothing to deprive himself of the benefits of unemployment compensation, and thus, there was no “just cause” within the meaning of the law to deny unemployment compensation benefits); *Knowles v. Roberts* (App.1952), 117 N.E.2d 173, 66 Ohio L.Abs. 345 (“[t]he discharge was justifiable under the contract. But this fact does not prevent the employee from receiving the benefits to which he is entitled under the [unemployment compensation] law and which must be liberally construed.”); *Dean v. Miami Valley Hosp.* (Feb. 22, 1988), 2nd Dist. No. CA 10391 (“the ‘just cause’ sufficient to justify the discharge of an employee need not be as grave as the ‘just cause’ required to disqualify a discharged employee from receiving unemployment compensation under R.C. 4141.29.”).

‘has been discharged for just cause *in connection with the individual’s work.*” (Emphasis sic.) Id. at ¶21, citing R.C. 4141.29(D)(2)(a). In *Case*, the employee was terminated for (1) the keeping of bullets at his work station, which the university deemed as possession of a weapon, “endangering life or property,” and “disruptive behavior and poor judgment,” (2) failing to disclose prior criminal convictions on his original employment application and, (3) for committing criminal offenses after being hired by the university.

This court noted, however, that none of the grounds for the employee’s termination cited by the university supported a finding that the employee was terminated “in connection with” his work. Id. at ¶24. This court, therefore, upheld the review commission’s decision that the university had terminated the employee without just cause and that he was therefore eligible for unemployment compensation.

The issue in this case is not whether Bridgeway wrongfully terminated Williams. Rather, the issue is whether Williams has the right to unemployment compensation benefits, or put another way, whether she did something, in connection with her work, that should deprive her of unemployment compensation benefits. We find she did not.

The evidence at the administrative level demonstrated that Williams had been performing the duties expected of her as a residential program manager

during the time period that she held the position. The only function that she was not able to do, because of her lack of licensure, was sign off on her clinical treatment plans. Another program manager therefore had to sign off on her plans. But that same program manager had also been signing off on another program manager's clinical plans for over 13 years because the latter did not have her LISW license. The evidence further showed that another program manager had served in that capacity for five or six years without a LISW license and did not obtain her license for 20 months after being promoted to residential program director.

We recognize this court's decision in *Robertson v. Director, Ohio Dept. of Job & Family Servs.*, Cuyahoga App. No. 86898, 2006-Ohio-3349. There, this court affirmed the review commission's decision that the claimant was discharged for just cause because, by failing to provide court documents relative to her past criminal history, she failed to obtain the security officer license required by her employer. Bridgeway and the Department of Job and Family Services contend that *Robertson* controls this case. There is a distinction between *Robertson* and this case, however. Namely, there was no evidence in *Robertson*, as there is here, that the claimant was treated differently from other employees.

"A termination pursuant to company policy will constitute just cause only if the policy is fair, and fairly applied. This court's review of the fairness of a company policy is necessarily limited to a determination of whether the employee received notice of the policy; whether the policy could be understood by the average person; and whether there was a rational basis for the policy. The issue of whether the policy was fairly applied relates to whether the policy was applied to some individuals but not others." (Citation omitted.) *Shaffer v. Am. Sickle Cell Anemia Assn.* (June 12, 1986), Cuyahoga App. No. 50127; see, also, *Apex Paper Box Co. v. Adm., Ohio Bur. of Emp. Servs.* (May 11, 2000), Cuyahoga App. No. 77423.

Here, it is undisputed that Williams was aware of the licensing requirement and understood it. Even assuming that there is a rational basis for the policy,³ it was not fairly applied. Another Bridgeway employee had been working as a program manager for over 13 years without her LISW license. And another program manager had served in that capacity for five or six years without a LISW license and did not obtain her license for 20 months after being promoted to residential program director.

³Williams's supervisor testified that in addition to allowing a program manager to sign off on his or her treatment plans, a LISW license gives a person "a certain expertise" in providing their service.

The officer justified the differing requirements for the licensing of the program managers, stating that "[i]t is not uncommon to have employers increase the educational pre-requisites in order to be hired or maintain employment." But Bridgeway's representative who testified at the hearing stated twice that she did not know of *any* policy of the agency requiring program managers to have a LISW license and did not know if any employees had been hired as program managers on the condition of obtaining a license, as Williams had been. She further testified that there was no governmental requirement that program managers have a LISW licence. None of the other evidence in the record shows the existence of such a Bridgeway policy.

On this record, the requirement imposed on Williams was not fairly applied to other program managers and therefore her assignments of error are sustained.

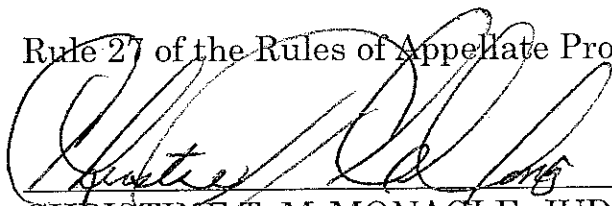
Judgment reversed and remanded.

It is ordered that appellant recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to
Rule 27 of the Rules of Appellate Procedure.

A handwritten signature in cursive script, appearing to read "Christine T. McMonagle", is written over a horizontal line.

CHRISTINE T. McMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
LARRY A. JONES, J., CONCUR

CASE NO.

681453

ASSIGNED JUDGE

Billie L Gallagher

Williams

VS

Dir. ODJFS

☐ 02 REASSIGNED ☐ 03 REINSTATED (C/A) ☐ 04 REINSTATED ☐ 20 MAGISTRATE ☐ 40 ARBITRATION ☐ 65 STAY ☐ 69 SUBMITTED	DISPOSITION	☐ 81 JURY TRIAL ☐ 82 ARBITRATION DECREE ☐ 83 COURT TRIAL ☐ 85 PRETRIAL ☐ 86 FOREIGN JUDGMENT ☐ 87 DIS. W/O PREJ ☐ 88 BANKRUPTCY/APPEAL STAY	☐ 89 DIS. W/PREJ. ☐ 91 COGNOVITS ☐ 92 DEFAULT ☐ 93 TRANS TO COURT ☐ 95 TRANS TO JUDGE ☒ 96 OTHER
NO. JURORS _____ START DATE ____/____/____ END DATE ____/____/____		COURT REPORTER _____ START DATE ____/____/____ END DATE ____/____/____	☐ PARTIAL ☒ FINAL ☒ POST CARD
DATE <u>6, 9, 09</u> (NUNC PRO TUNC ENTRY AS OF & FOR ____/____/____)			CLERK OF COURT
Journal Entry : Opinion Costs to Plaintiffs. OST _____ JUDGE			

 CV09681453
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FORM

CPC 43-2

Williams applied for Unemployment Compensation, and on 7/16/08, the Director issued a determination disallowing Williams' application for benefits. Specifically, the Director found that Williams was discharged for just cause in connection with her work. Williams appealed this decision on 08/04/08.

On 08/22/08, the Director issued a re-determination affirming the initial determination, and Williams again appealed. On 9/10/08, Williams timely appealed the re-determination, and the case was transferred to the Review Commission.

In a decision mailed 11/10/08, the Review Commission's Hearing Officer found that Williams accepted a letter of appointment as a Residential Program Manager which stipulated that she was required to pass an LISW licensee exam within 15 months. The Hearing Officer found that passing the exam was a term and condition of employment. He also noted that Williams had taken the exam at the end of the 15-month term, failed the exam and lacked sufficient time to take the test again. The Hearing Officer also responded to Williams' claims that two other program managers were not required to take and pass their LISW test within fifteen months and found,

"Claimant raises the defense that two other Residential Program Managers did not have the LISW certification. One has been a Residential Program Manager for thirteen years and the other for five years. It is not uncommon to have employers increase the educational pre-requisites in order to be hired or maintain employment. Claimant knew she had fifteen months to get the certification. She failed to do so without justification."

Williams then filed a request for review before the Unemployment Compensation Commission Review Commission. This request was denied on 12/10/08. Pursuant to R.C. 4141.282, Williams then filed a notice of appeal to this Court on 1/09/09 and presents a single assignment of error which states:

"Assignment of Error:

The Unemployment Compensation Review Commission's finding that Bridgeway, Inc. discharged Mary Williams with just cause is against the

manifest weight of the evidence where Mrs. Williams acted in Bridgeway's best interest and Bridgeway accommodated a similarly situated employee and did not apply its qualification standards consistently."

In her brief, Williams maintains that she was unable to take the exam any earlier due to the preparation required to pass the exam, as well as the stress of her newly created supervisory duties. Further, Williams argues that her failure to obtain her LISW meant only that another program manager, Pat Fahey, would have to sign off on Williams' clinical treatment plans. Williams asserts that Fahey has been signing off on the treatment plans of another program manager, Marie Burchette, for over 13 years. Burchette was hired as a Residential Program Manager in 1994 and, to date, does not have her LISW.

Williams also cites to Residential Program Manager Cheryl Lydston who was promoted to Residential Program Director in 2006. After her promotion, Lydston was given twenty months to obtain her LISW, as opposed to the fifteen months allotted to Williams.

Williams sets forth that her inability to pass the LISW exam within 15 months did not amount to "just cause" for discharge because Bridgeway did not require other Residential Program Managers to meet this standard. Second, Williams argues that Bridgeway's LISW qualification for Program Manager was not consistently applied.

Both the state and the employer filed briefs in opposition asserting that the Review Commission is specifically authorized to weigh the evidence and judge the credibility of witnesses, and that this Court must defer to the Review Commission. Second, the defendants submit that the Review Commission's decision is supported by competent, credible evidence that Williams was discharged for just cause.

To combat Williams claim that similarly situated employees were treated differently, Defendant, the Ohio Department of Job and Family Services, (hereafter "ODJFS"), sets forth that in an unemployment benefits case, the issue is not whether a discharge was justifiable in terms of a wrongful discharge, but rather was it for just cause under R.C.

4141.29(D)(2). In this case, Plaintiff must be at "fault," and defendants submit that Williams was aware of the condition of employment, acknowledged that condition, failed to fulfill that condition and was terminated. ODJFS submits that Lydston has been a residential program manager since 2000 and Burchette was hired as a nurse manager in 1995. Lydston did obtain her LISW, however ODJFS submits that in attempting to show that she was treated differently, Williams is attempting to introduce a separate cause of action into this unemployment compensation appeal. ODJFS submits that this Court's only duty is to determine whether the Review Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence.

II. Standard of Review

Williams seeks review under R.C. 4141.282(H), entitled, "Review by the Court of Common Pleas" which provides:

"The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission."

A court may not make factual determinations or substitute its judgment for that of the commission. *Irvine v. Unemployment Compensation Bd. of Rev.* (1985), 19 Ohio St.3d 15. Where the commission might reasonably decide either way, the court has no authority to upset the commission's decision. *Id.* While courts are not permitted to make factual findings or determine the credibility of witnesses, they have the duty to determine whether the record contains evidence to support the commission's decision. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 1995 Ohio 206.

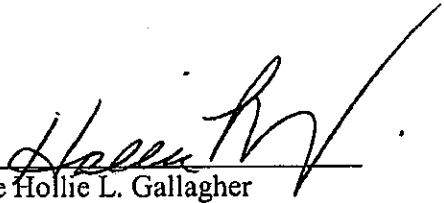
In *Irvine*, *supra*, the Ohio Supreme Court held that reviewing courts may reverse "just cause" determinations "if they are unlawful, unreasonable, or against the manifest weight of the evidence." Moreover, fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas*, *supra*.

III. Conclusion

Defendants have maintained that Williams was unfit to continue in her current role due to her lack of LISW certification. The Court agrees and finds that unsuitability for a position constitutes fault sufficient to support a just cause termination. An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change since the date of the original hiring for that particular position. See *Tzangas*, supra.

A complete review of the file indicates that upon receipt of her promotion in January of 2007, Williams was advised that she would be required to become a LISW by May of 2008. Williams then signed to acknowledge receipt of this condition on 1/23/07. Williams nonetheless chose to take the LISW examination at the end of the required term and unfortunately failed the exam and lacked sufficient time to re-take it to obtain her licensure. As noted by the Hearing Officer, "[I]t is not uncommon to have employers increase the educational pre-requisites in order to be hired or maintain employment. Claimant knew she had fifteen months to get the certification. She failed to do so without justification."

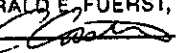
Following a review of the complete record and for these reasons outlined above, the Court finds that the decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence and affirms the finding of the Review Commission. Appeal denied. Final.


Judge Hollie L. Gallagher

6/8/09
Date

RECEIVED FOR FILING

JUN 10 2009

GERALD E. FUERST, CLERK
By  Deputy



OFFICE OF UNEMPLOYMENT COMPENSATION
DETERMINATION OF UNEMPLOYMENT COMPENSATION BENEFITS

JFS-83000 06/05/2008

Claimant's Name MARY H. WILLIAMS		Social Security Number [REDACTED]	Determination Identification Number 215755794-1
Benefit Year Beginning Date 06/22/2008	Benefit Year Ending Date 06/20/2009	Application Date 06/24/2008	Date Issued 07/16/2008
MARY H. WILLIAMS 3680 NORWOOD RD APT 4 SHAKER HEIGHTS, OH 44122		ODJFS Office Richmond Heights Processing Center PO Box 43039 Richmond Heights, OH 44143-0000 Phone: (866) 576-0006 Fax: (216) 732-2914	

THIS NOTICE IS A DETERMINATION OF AN INITIAL APPLICATION FOR UNEMPLOYMENT BENEFITS, ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 4141.28(D) & (E), OHIO REVISED CODE

In accordance with Section 4141.01(R)(2) of the Ohio Revised Code, the Ohio Department of Job and Family Services has **DISALLOWED** the claimant's application for unemployment compensation benefits dated 06/24/2008 due to a disqualifying separation from employment or other reasons described in the following text:

The claimant was discharged by **BRIDGEWAY INC.** on 06/20/2008. The employer discharged the claimant for not providing and maintaining the license, permit, or insurability required to perform the work. Facts establish that the claimant was made aware at the time of hire that he/she was responsible for maintaining the license, permit, or insurability. Ohio's legal standard that determines if a discharge is with just cause is whether the claimant's acts, omissions, or course of conduct were such that an ordinary person would find the discharge justifiable. After a review of the facts, this agency finds that the claimant was discharged with just cause under Section 4141.29(D)(2)(a), Ohio Revised Code. Therefore, no benefits will be paid until the claimant obtains employment subject to an unemployment compensation law, works six weeks, earns wages of \$1236, and is otherwise eligible.

Interested Parties: **BRIDGEWAY INC.**

APPEAL RIGHTS: If you do not agree with this determination, you may file an appeal by mail or fax to the ODJFS Claims Processing Center shown above. You may also file an appeal online at <https://unemployment.ohio.gov>. The appeal should include the determination ID number, name, claimant's social security number, and any additional facts and/or documentation to support the appeal. **To be timely, your appeal must be received/postmarked no later than 08/06/2008** (21 calendar days after the 'Date Issued'). If the 21st day falls on a Saturday, Sunday, or legal holiday, your deadline has already been extended to include the next scheduled work day. If you do not file your appeal within the 21-day calendar period, include a statement with the date you received the determination and your reason for filing late. If your appeal is late due to a physical or mental condition, provide certified medical evidence that your condition prevented you from filing within the 21-day period. In order for your appeal to be considered timely, it must be received/postmarked no later than 21 calendar days after the ending date of the physical or mental condition. If **unemployed**, claimants should continue to file weekly claims for benefits while the determination is under appeal. For additional information, call the ODJFS automated telephone system at 1-877-644-6562 and select the General Information option or visit the agency's website at <https://unemployment.ohio.gov>. Claimants may also review the *Worker's Guide to Unemployment Compensation*.

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

11. Determination Notices

215755794-2



JFS-83100 06/09/2008

OFFICE OF UNEMPLOYMENT COMPENSATION DIRECTOR'S REDETERMINATION

Claimant's Name MARY H. WILLIAMS		Social Security Number [REDACTED]
Benefit Year Beginning Date 06/22/2008	Benefit Year Ending Date 06/20/2009	Application Date 06/24/2008
MARY H. WILLIAMS 3680 NORWOOD RD APT 4 SHAKER HEIGHTS, OH 44122		Date Issued 08/22/2008
		Determination Identification Number 215755794-2
		ODJFS Office Redetermination Unit

THIS NOTICE IS A DETERMINATION OF AN INITIAL APPLICATION FOR UNEMPLOYMENT BENEFITS, ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 4141.28(D) & (E), OHIO REVISED CODE

APPELLANT A determination with ID # 215755794-1, issued on 07/16/2008, was appealed as follows:

By: MARY H WILLIAMS on 08/04/2008

DECISION & REASONING **AFFIRMED** - A review of the original facts plus those submitted in the appeal does not support a change in the initial determination.

The determination with ID # 2157557941, issued on 07/16/2008, is hereby affirmed.

In accordance with Section 4141.01(R)(2) of the Ohio Revised Code, the Ohio Department of Job and Family Services has **DISALLOWED** the claimant's application for unemployment compensation benefits dated 06/24/2008 due to a disqualifying separation from employment or other reasons described in the following text:

This portion of the determination has been affirmed.

The claimant was discharged by BRIDGEWAY INC. on 06/20/2008. The employer discharged the claimant for not providing and maintaining the license, permit, or insurability required to perform the work. Facts establish that the claimant was made aware at the time of hire that he/she was responsible for maintaining the license, permit, or insurability. Ohio's legal standard that determines if a discharge is with just cause is whether the claimant's acts, omissions, or course of conduct were such that an ordinary person would find the discharge justifiable. After a review of the facts, this agency finds that the claimant was discharged with just cause under Section 4141.29(D)(2)(a), Ohio Revised Code. Therefore, no benefits will be paid until the claimant obtains employment subject to an unemployment compensation law, works six weeks, earns wages of \$1236, and is otherwise eligible.

INTERESTED PARTIES **BRIDGEWAY INC.**

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traducción.

APPEAL RIGHTS: If you do not agree with this redetermination, you may file an appeal by mail to the ODJFS Director, Bureau of UC Benefits, PO Box 182863, Columbus, OH 43218-2863; by fax to 1-614-466-8392, or at the ODJFS website at <https://unemployment.ohio.gov>. The appeal should include the redetermination ID number, your name, the claimant's social security number, and any additional facts and/or documentation to support the appeal. **To be timely, your appeal must be received/postmarked no later than 09/12/2008** (21 calendar days after the Date Issued). If the 21st day falls on a Saturday, Sunday, or Legal Holiday, your deadline has already been extended to include the next scheduled work day. If you do not file your appeal within the 21-day calendar period, include a statement with the date you received the redetermination and your reason for filing late. If your appeal is late due to a physical or mental condition, provide certified medical evidence that your condition prevented you from filing within the 21-day period. In order for your appeal to be considered timely, it must be received/postmarked within 21 calendar days after the ending date of the physical or mental condition. **If unemployed**, claimants should continue to file weekly claims for benefits while the redetermination is under appeal. For additional information, call the ODJFS automated telephone system at 1- 877-644-6562 and select the General Information option or visit the agency's website at <https://unemployment.ohio.gov>. Claimants may also review the *Workers' Guide to Unemployment Compensation*.

If you appeal this redetermination and are employed during any of the hours between 8:00am and 4:30pm, you may request that your hearing be scheduled during non-working hours. Include the request as part of your appeal, and list your hours of employment. If held after 4:30pm, the hearing will be held by telephone.



Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traducción.



State of Ohio
Unemployment Compensation Review Commission
P.O. Box 182299
Columbus, Ohio 43218-2299

C2008-337-0010
Docket No: H2008-256-0142

DECISION

In re claim of:

Mary H. Williams - APPELLANT

Employer:

Bridgeway, Inc.
UCO No.: 0831933003-0000

Employer Representative:

TALX Employer Services

CASE HISTORY

The claimant, Mary H. Williams, filed an Application for Determination of Benefit Rights for a benefit year beginning June 22, 2008.

On August 22, 2008, the Director issued a Redetermination disallowing claimant's application, based upon the finding that claimant was discharged from employment with Bridgeway, Inc., for just cause in connection with work. It was further held that no benefits will be paid until claimant obtains covered employment, works six weeks, earns wages of \$1,236.00 or more, and is otherwise eligible. Other matters may have been addressed by the Redetermination which are not relevant to this case.

On September 10, 2008, the claimant filed an appeal from the Redetermination.

On September 11, 2008, the Ohio Department of Job and Family Services transferred jurisdiction to the Unemployment Compensation Review Commission.

On October 21, 2008, a hearing was held before Hearing Officer Charles D. Underwood by telephone. Claimant appeared and offered testimony. Mr. James Lee Pope, a law student and clinic student with Cleveland Marshall College of Law, Law School Clinics, under the supervision of Clinic Professor Mr. Gordon Beggs, Esq., represented the claimant. Ms. Molly Matejka, Associate Director of Human Resources, represented the employer. Ms. Matejka and Ms. Cheryl Lydston, Director of Residential Services, testified on behalf of the employer.

FINDINGS OF FACT

The employer, Bridgeway, Inc., is a Community Mutual Health Center. Claimant was hired full-time on October 30, 2006, as a Residential Social Worker. She was promoted to Residential Program Manager in January 2007. Claimant received a salary based on an hourly wage of \$20.59. She was discharged on June 20,

2008, because she had not obtained a LISW certification that was a condition of promotion to Residential Program Manager.

A letter of appointment, dated January 17, 2007, signed by claimant on January 23, 2007, states that claimant had read, and she "will be required to complete your LISW licensure within fifteen months (by May 2008), which is a requirement for this position." Claimant signed the letter acknowledging that she read the attached position description and accepted the terms and conditions of employment as stated and discussed for the position of Residential Services Program Manager.

Claimant took the LISW test in early June 2008, and received a failing grade. She was not eligible to re-take the test for at least ninety days.

The previous Residential Program Manager was Ms. Lydston, who performed the duties for five years without a LISW certification. Another Residential Program Manager, Ms. Burchette, is a Program Manager and has been since 1995, without a LISW certification.

ISSUE

Was claimant discharged by Bridgeway, Inc., for just cause in connection with work?

LAW

An individual is not eligible for benefits if the individual was discharged for just cause in connection with work. The individual will remain ineligible until the individual obtains another job covered by an unemployment compensation law, works six weeks, and earns at least \$1,236.00. *Section 4141.29 (D) (2) (a) and 4141.29 (G) O.R.C.* For applications filed on and after August 1, 2004, a non-disqualifying separation from employment is a requirement for a valid application. *Section 4141.01 (R) (2) O.R.C.*

REASONING

The facts cited above strongly support the decision that claimant was discharged with just cause in connection with her work and that the Redetermination decision must be affirmed. When claimant was offered and accepted the position as Residential Program Manager, she clearly knew that she was required, as a condition of employment, to pass the test to receive her LISW certification within fifteen months. She waited to the last moment and failed the test with insufficient time remaining to retake the test.

Claimant raises the defense that two other Residential Program Managers did not have the LISW certification. One has been a Residential Program Manager for thirteen years and the other for five years. It is not uncommon to have employers increase the educational pre-requisites in order to be hired or maintain employment. Claimant knew she had fifteen months to get the certification. She failed to do so without justification.

DECISION

The Director's Redetermination, issued August 22, 2008, is affirmed with respect to claimant's separation from Bridgeway, Inc.

Claimant's Application for Determination of Benefit Rights is disallowed as claimant was separated from employment under disqualifying conditions. Specifically, claimant was discharged by Bridgeway, Inc., for just cause in connection with work. No benefits will be payable until claimant works in six weeks of covered employment, earns at least \$1,236.00, and is otherwise eligible.

This decision rules on only those issues set forth above.

Charles D. Underwood, Hearing Officer

CDU/lar

OJI Determination #: 215755794

APPEAL RIGHTS

This decision was mailed on November 10, 2008.

A Request for Review before the U.C. Review Commission may be filed by any interested party within twenty-one calendar days after this decision is mailed. Said twenty-one day period is calculated to end on December 1, 2008.

The Request for Review must be in writing and signed by the appealing party or an authorized representative. The request should set forth the reasons why the appellant disagrees with the Hearing Officer's decision. You may file your Request for Review by mailing it to the U.C. Review Commission, P.O. Box 182299, Columbus, Ohio 43218-2299, or by faxing it to (614) 387-3694.

This decision was sent to the following:

Mary H. Williams
3680 Norwood Rd Apt 4
Shaker Heights OH 44122-4972

Bridgeway, Inc.
1708 Southpoint Dr. 1 Left
Cleveland OH 44109

Attn: Bridgeway, Inc.
TALX Employer Services
P. O. Box 1160
Columbus OH 43216



State of Ohio
Unemployment Compensation Review Commission
P.O. Box 182299
Columbus, Ohio 43218-2299

Docket No:
C2008-337-0010

DECISION DISALLOWING REQUEST FOR REVIEW

In re claim of:
Mary H. Williams - APPELLANT

Claimant Representative:
Cleveland-Marshall Law College

Employer:
Bridgeway, Inc.
UCO No.: 0831933003-0000
Issues: DISCH

Employer Representative:
TALX Employer Services

Director:
Ohio Department of Job and Family Services

Hearing Officer Decision Docket No.: H2008-256-0142

On December 1, 2008, the claimant filed a request for review.

Date This Decision Mailed: December 10, 2008

Issues: (References are to Revised Code of Ohio, Chapter 4141, unless otherwise noted. Issues pertaining to a specific employer are listed below their name.)

DISCH

Was the claimant discharged by the employer for just cause in connection with work?

An individual is not eligible for benefits if the individual was discharged for just cause in connection with work. The individual will remain ineligible until the individual obtains covered employment, works six weeks, and earns the required requalifying amount. 4141.29 (D)(2)(a), 4141.29 (G) ORC. For applications filed after August 1, 2004, a non-disqualifying separation from employment is a requirement for a valid application. An individual is not disqualified if the individual was discharged without just cause in connection with work. Section 4141.29 (D)(2)(a) ORC.

The appellant shown above filed a Request for Review to the Review Commission, pursuant to the provisions of Section 4141.281 (A) (3), Revised Code of Ohio, from the Hearing Officer's decision indicated.

Upon consideration thereof, and upon a review of the entire record, the Commission concludes that the Request for Review should be disallowed.

DECISION

The Request for Review is hereby disallowed.

APPEAL RIGHTS

An appeal from this decision may be filed to the Court of Common Pleas of the county where the appellant, if an employee, is resident or was last employed, or of the county where the appellant, if an employer, is resident or has the principal place of business in this state, within thirty (30) days from the date of mailing of this decision, as set forth in Section 4141.282 (A) (B) (B), Revised Code of Ohio. The appellant must name all interested parties as appellees in the notice of appeal, including the Director of the Department of Job and Family Services.

If your appeal is filed more than thirty(30) days from the date of mailing, then you may ask the Court of Common Pleas to determine the timeliness of your appeal. The court may find the appeal to be timely if you did not receive this decision within thirty (30) days after it was mailed to you. For more information refer to the booklet "Workers' Guide to Unemployment Compensation (JFS-55213), available from Ohio Department of Job and Family Services or visit the agency's website at <https://unemployment.ohio.gov>.

Unemployment Compensation Review Commission

E.J. Thomas, Chairman
Kenny DeLaney, Vice-Chairman
Sylvester Patton, Member

This decision was sent to the following:

Mary H. Williams
3680 Norwood Rd Apt 4
Shaker Heights OH 44122-4972

Bridgeway, Inc.
1708 Southpoint Dr 1 Left
Cleveland OH 44109

Attn: Gordon J. Beggs, Esq.
Cleveland-Marshall Law College
Employment Law Clinic
2121 Euclid Ave Lb 138
Cleveland OH 44115

Attn: Bridgeway, Inc.
TALX Employer Services
P. O. Box 1160
Columbus OH 43216

(B)



January 17, 2007

Mary Williams
3880 Norwood Rd
Shaker Hts Ohio 44122

Dear Mary:

On behalf of Debbie Barris, Chief Operating Officer, and Bridgeway, Inc., I am pleased to confirm your promotion to the Residential Services Program Manager, effective February 19, 2007. You will remain a full-time employee, 40 hours per week, and your schedule may include nontraditional work hours, and is subject to change as per agency or programmatic needs. Your rate of pay will become \$20.19/hour (\$42,000/year). You will be required to complete your LISW licensure within 15 months (by May 2008) which is a requirement for this position. Failure to complete the LISW licensure by May of 2008 will make you ineligible to keep this position. Upon the completion of your LISW licensure your annual salary will be increased by \$5,000. Proof of Licensure must be delivered to Human Resources.

Please see human Resources about benefit changes. Your direct supervisor will be Cheryl Lydston, Director of Residential Services.

Responsibilities of the Residential Services Manager are described in the attached position description. This position is not in the bargaining unit of the Service Employees International Union. As per agency policy the probationary period will be six months and a formal conference along with a written evaluation with your supervisor will be given prior to the completion of the probationary period.

If you agree to the terms and conditions of employment as discussed and the requirements of the position, please sign and return both the original of this letter and the position description to the Human Resource Department by January 29, 2007. A copy of this letter is enclosed for your records

Sincerely,
BRIDGEWAY, INC.

Patty Baszuk
Human Resources Specialist

I have read the attached position description and accept the terms and conditions of employment as stated and discussed for the position of Residential Services Program Manager. Additionally, I understand that I will not continue as a member of the bargaining unit and will not be covered by the bargaining unit agreement.

Mary H. Williams (sc) , 01/23/07
Mary Williams Date

cc: Fiscal
Allsa Flier
Cheryl Lydston

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Bridgeway, Inc.

A network of mental health
& recovery services

Administrative Offices 2202 Prince Avenue
Cleveland, OH 44109
T. 216-688-7202
F. 216-416-4286

Programs & Services 8301 Detroit Avenue
Cleveland, OH 44102
T. 216-281-2660
F. 216-534-2076

www.bridgewayinc.org

June 23, 2008

Mary Williams
3680 Norwood Road
Shaker Heights, Ohio 44122

Via: Hand Delivery

Dear Mary:

This letter is to confirm the termination of your employment effective June 23, 2008.

The reason for your termination is your failure to obtain appropriate /relevant licensure (LISW) by May 2008 as was outlined and accepted by you, on January 23, 2007, in your terms and conditions of employment.

The issue of obtaining a LISW was also addressed with you in numerous supervision sessions held with Cheryl Lydston. Additionally, you were also sent a reminder email relative to this requirement. At no time did you report that you were having difficulties obtaining licensure.

The Human Resources Department will be in touch with you in a separate letter regarding any benefits you may have. Any unused accrued vacation time you may have will be paid out to you. Your final paycheck will be mailed to your home. Any agency property that you may have in your possession needs to be turned in immediately. Please contact Cheryl Lydston to arrange for a time to come in to drop off the agency's equipment and to retrieve your personal belongings.

If you have any questions, please contact me at (216) 688-7222.

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Regards,

Deborah B. Barris / JB
Deborah B. Barris
Chief Operating Officer

(A)

Cc: Cheryl Lydston
Jackie Puntel
Mary Rose Pieffer

Case # H20082560142

Archive

Ohio Statutes**Title 41. LABOR AND INDUSTRY****Chapter 4141. UNEMPLOYMENT COMPENSATION***Current through November, 2010*

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§ 4141.29. Eligibility for benefits

Each eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in the amounts and subject to the conditions stipulated in this chapter.

(A) No individual is entitled to a waiting period or benefits for any week unless the individual:

(1) Has filed a valid application for determination of benefit rights in accordance with section **4141.28** of the Revised Code;

(2) Has made a claim for benefits in accordance with section **4141.28** of the Revised Code;

(3) Has registered at an employment office or other registration place maintained or designated by the director of job and family services. Registration shall be made in accordance with the time limits, frequency, and manner prescribed by the director.

(4)(a)(i) Is able to work and available for suitable work and, except as provided in division (A)(4)(a)(ii) of this section, is actively seeking suitable work either in a locality in which the individual has earned wages subject to this chapter during the individual's base period, or if the individual leaves that locality, then in a locality where suitable work normally is performed.

(ii) The director may waive the requirement that a claimant be actively seeking work when the director finds that the individual has been laid off and the employer who laid the individual off has notified the director within ten days after the layoff, that work is expected to be available for the individual within a specified number of days not to exceed forty-five calendar days following the last day the individual worked. In the event the individual is not recalled within the specified period, this waiver shall cease to be operative with respect to that layoff.

(b) The individual shall be instructed as to the efforts that the individual must make in the search for suitable work, except where the active search for work requirement has been waived under division (A)(4)(a) of this section, and shall keep a record of where and when the individual has sought work in complying with those instructions and, upon request, shall produce that record for examination by the director.

(c) An individual who is attending a training course approved by the director meets the requirement of this division, if attendance was recommended by the director and the individual is regularly attending the course and is making satisfactory progress. An individual also meets the requirements of this division if the individual is participating and advancing in a training program, as defined in division (P) of section **5709.61** of the Revised Code, and if an enterprise, defined in division (B) of section **5709.61** of the Revised Code, is paying all or part of the cost of the individual's participation in the training program with the intention of hiring the individual for employment as a new employee, as defined in division (L) of section **5709.61** of the Revised Code, for at least ninety days after the individual's completion of the training program.

(d) An individual who becomes unemployed while attending a regularly established school and whose base period qualifying weeks were earned in whole or in part while attending that school, meets the availability and active search for work requirements of division (A)(4)(a) of this section if the individual regularly attends the school during weeks with respect to which the individual claims unemployment benefits and makes self available on any shift of hours for suitable employment with the individual's most recent employer or any other employer in the individual's base period, or for any

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other suitable employment to which the individual is directed, under this chapter.

(e) The director shall adopt any rules that the director deems necessary for the administration of division (A)(4) of this section.

(f) Notwithstanding any other provisions of this section, no otherwise eligible individual shall be denied benefits for any week because the individual is in training approved under section 236(a)(1) of the "Trade Act of 1974," 88 Stat. 1978, **19 U.S.C.A. 2296**, nor shall that individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this chapter, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work.

For the purposes of division (A)(4)(f) of this section, "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for the purposes of the "Trade Act of 1974," 88 Stat. 1978, **19 U.S.C.A. 2101**, and wages for such work at not less than eighty per cent of the individual's average weekly wage as determined for the purposes of that federal act.

(5) Is unable to obtain suitable work. An individual who is provided temporary work assignments by the individual's employer under agreed terms and conditions of employment, and who is required pursuant to those terms and conditions to inquire with the individual's employer for available work assignments upon the conclusion of each work assignment, is not considered unable to obtain suitable employment if suitable work assignments are available with the employer but the individual fails to contact the employer to inquire about work assignments.

(6) Participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust benefits under this chapter, including compensation payable pursuant to 5 U.S.C.A. Chapter 85, other than extended compensation, and needs reemployment services pursuant to the profiling system established by the director under division (K) of this section, unless the director determines that:

(a) The individual has completed such services; or

(b) There is justifiable cause for the claimant's failure to participate in such services.

(B) An individual suffering total or partial unemployment is eligible for benefits for unemployment occurring subsequent to a waiting period of one week and no benefits shall be payable during this required waiting period. Not more than one week of waiting period shall be required of any individual in any benefit year in order to establish the individual's eligibility for total or partial unemployment benefits.

(C) The waiting period for total or partial unemployment shall commence on the first day of the first week with respect to which the individual first files a claim for benefits at an employment office or other place of registration maintained or designated by the director or on the first day of the first week with respect to which the individual has otherwise filed a claim for benefits in accordance with the rules of the department of job and family services, provided such claim is allowed by the director.

(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(1) For any week with respect to which the director finds that:

(a) The individual's unemployment was due to a labor dispute other than a lockout at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer by which the individual is or was last employed; and for so long as the individual's unemployment is due to such labor dispute. No individual shall be disqualified under this provision if either of the following applies:

(i) The individual's employment was with such employer at any factory, establishment, or premises located in this state, owned or operated by such employer, other than the factory, establishment, or premises at which the labor dispute exists, if it is shown that the individual is not financing, participating in, or directly interested in such labor dispute;

(ii) The individual's employment was with an employer not involved in the labor dispute but whose place of business was located within the same premises as the employer engaged in the dispute, unless the individual's employer is a wholly owned subsidiary of the employer engaged in the dispute, or unless the individual actively participates in or voluntarily stops work because of such dispute. If it is established that the claimant was laid off for an indefinite period and not recalled to work prior to the dispute, or was separated by the employer prior to the dispute for reasons other than the labor dispute, or that the individual obtained a bona fide job with another employer while the dispute was still in progress, such labor dispute shall not render the employee ineligible for benefits.

(b) The individual has been given a disciplinary layoff for misconduct in connection with the individual's work.

(2) For the duration of the individual's unemployment if the director finds that:

(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work, provided division (D)(2) of this section does not apply to the separation of a person under any of the following circumstances:

(i) Separation from employment for the purpose of entering the armed forces of the United States if the individual is inducted into the armed forces within one of the following periods:

(I) Thirty days after separation;

(II) One hundred eighty days after separation if the individual's date of induction is delayed solely at the discretion of the armed forces.

(ii) Separation from employment pursuant to a labor-management contract or agreement, or pursuant to an established employer plan, program, or policy, which permits the employee, because of lack of work, to accept a separation from employment;

(iii) The individual has left employment to accept a recall from a prior employer or, except as provided in division (D)(2)(a)(iv) of this section, to accept other employment as provided under section 4141.291 of the Revised Code, or left or was separated from employment that was concurrent employment at the time of the most recent separation or within six weeks prior to the most recent separation where the remuneration, hours, or other conditions of such concurrent employment were substantially less favorable than the individual's most recent employment and where such employment, if offered as new work, would be considered not suitable under the provisions of divisions (E) and (F) of this section. Any benefits that would otherwise be chargeable to the account of the employer from whom an individual has left employment or was separated from employment that was concurrent employment under conditions described in division (D)(2)(a)(iii) of this section, shall instead be charged to the mutualized account created by division (B) of section 4141.25 of the Revised Code, except that any benefits chargeable to the account of a reimbursing employer under division (D)(2)(a)(iii) of this section shall be charged to the account of the reimbursing employer and not to the mutualized account, except as provided in division (D)(2) of section 4141.24 of the Revised Code.

(iv) When an individual has been issued a definite layoff date by the individual's employer and before the layoff date, the individual quits to accept other employment, the provisions of division (D)(2)(a)(iii) of this section apply and no disqualification shall be imposed under division (D) of this section. However, if the individual fails to meet the employment and earnings requirements of division (A)(2) of section 4141.291 of the Revised Code, then the individual, pursuant to division (A)(5) of this section, shall be ineligible for benefits for any week of unemployment that occurs prior to the layoff date.

(b) The individual has refused without good cause to accept an offer of suitable work when made by an employer either in person or to the individual's last known address, or has refused or failed to investigate a referral to suitable work when directed to do so by a local employment office of this state or another state, provided that this division shall not cause a disqualification for a waiting week or benefits under the following circumstances:

(i) When work is offered by the individual's employer and the individual is not required to accept the offer pursuant to the terms of the labor-management contract or agreement; or

(ii) When the individual is attending a training course pursuant to division (A)(4) of this section except, in the event of a refusal to accept an offer of suitable work or a refusal or failure to investigate a referral, benefits thereafter paid to such individual shall not be charged to the account of any employer and, except as provided in division (B)(1)(b) of section **4141.241** of the Revised Code, shall be charged to the mutualized account as provided in division (B) of section **4141.25** of the Revised Code.

(c) Such individual quit work to marry or because of marital, parental, filial, or other domestic obligations.

(d) The individual became unemployed by reason of commitment to any correctional institution.

(e) The individual became unemployed because of dishonesty in connection with the individual's most recent or any base period work. Remuneration earned in such work shall be excluded from the individual's total base period remuneration and qualifying weeks that otherwise would be credited to the individual for such work in the individual's base period shall not be credited for the purpose of determining the total benefits to which the individual is eligible and the weekly benefit amount to be paid under section **4141.30** of the Revised Code. Such excluded remuneration and noncredited qualifying weeks shall be excluded from the calculation of the maximum amount to be charged, under division (D) of section **4141.24** and section **4141.33** of the Revised Code, against the accounts of the individual's base period employers. In addition, no benefits shall thereafter be paid to the individual based upon such excluded remuneration or noncredited qualifying weeks.

For purposes of division (D)(2)(e) of this section, "dishonesty" means the commission of substantive theft, fraud, or deceitful acts.

(E) No individual otherwise qualified to receive benefits shall lose the right to benefits by reason of a refusal to accept new work if:

(1) As a condition of being so employed the individual would be required to join a company union, or to resign from or refrain from joining any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization.

(2) The position offered is vacant due directly to a strike, lockout, or other labor dispute.

(3) The work is at an unreasonable distance from the individual's residence, having regard to the character of the work the individual has been accustomed to do, and travel to the place of work involves expenses substantially greater than that required for the individual's former work, unless the expense is provided for.

(4) The remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(F) Subject to the special exceptions contained in division (A)(4)(f) of this section and section **4141.301** of the Revised Code, in determining whether any work is suitable for a claimant in the administration of this chapter, the director, in addition to the determination required under division (E) of this section, shall consider the degree of risk to the claimant's health, safety, and morals, the individual's physical fitness for the work, the individual's prior training and experience, the length of the individual's unemployment, the distance of the available work from the individual's residence, and the individual's prospects for obtaining local work.

(G) The "duration of unemployment" as used in this section means the full period of unemployment next ensuing after a separation from any base period or subsequent work and until an individual has become reemployed in employment subject to this chapter, or the unemployment compensation act of another state, or of the United States, and until such individual has worked six weeks and for those weeks has earned or been paid remuneration equal to six times an average weekly wage of not less than: eighty-five dollars and ten cents per week beginning on June 26, 1990; and beginning on and after January 1, 1992, twenty-seven and one-half per cent of the statewide average weekly wage as computed each first day of January under division (B)(3) of section **4141.30** of the Revised Code, rounded down to the nearest dollar, except for purposes of division (D)(2)(c) of this section, such term means the full period of unemployment next ensuing after a separation from such work and until such individual has become reemployed subject to the terms set forth above, and has earned wages equal to one-half of the individual's average weekly wage or sixty dollars, whichever is less.

(H) If a claimant is disqualified under division (D)(2)(a), (c), or (d) of this section or found to be qualified under the exceptions provided in division (D)(2)(a)(i), (iii), or (iv) of this section or division (A)(2) of section 4141.291 of the Revised Code, then benefits that may become payable to such claimant, which are chargeable to the account of the employer from whom the individual was separated under such conditions, shall be charged to the mutualized account provided in section 4141.25 of the Revised Code, provided that no charge shall be made to the mutualized account for benefits chargeable to a reimbursing employer, except as provided in division (D)(2) of section 4141.24 of the Revised Code. In the case of a reimbursing employer, the director shall refund or credit to the account of the reimbursing employer any over-paid benefits that are recovered under division (B) of section 4141.35 of the Revised Code. Amounts chargeable to other states, the United States, or Canada that are subject to agreements and arrangements that are established pursuant to section 4141.43 of the Revised Code shall be credited or reimbursed according to the agreements and arrangements to which the chargeable amounts are subject.

(I)(1) Benefits based on service in employment as provided in divisions (B)(2)(a) and (b) of section 4141.01 of the Revised Code shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except that after December 31, 1977:

(a) Benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education, as defined in division (Y) of section 4141.01 of the Revised Code; or for an educational institution as defined in division (CC) of section 4141.01 of the Revised Code, shall not be paid to any individual for any week of unemployment that begins during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of those academic years or terms and has a contract or a reasonable assurance that the individual will perform services in any such capacity for any such institution in the second of those academic years or terms.

(b) Benefits based on service for an educational institution or an institution of higher education in other than an instructional, research, or principal administrative capacity, shall not be paid to any individual for any week of unemployment which begins during the period between two successive academic years or terms of the employing educational institution or institution of higher education, provided the individual performed those services for the educational institution or institution of higher education during the first such academic year or term and, there is a reasonable assurance that such individual will perform those services for any educational institution or institution of higher education in the second of such academic years or terms.

If compensation is denied to any individual for any week under division (I)(1)(b) of this section and the individual was not offered an opportunity to perform those services for an institution of higher education or for an educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of compensation for each week for which the individual timely filed a claim for compensation and for which compensation was denied solely by reason of division (I)(1)(b) of this section. An application for retroactive benefits shall be timely filed if received by the director or the director's deputy within or prior to the end of the fourth full calendar week after the end of the period for which benefits were denied because of reasonable assurance of employment. The provision for the payment of retroactive benefits under division (I)(1)(b) of this section is applicable to weeks of unemployment beginning on and after November 18, 1983. The provisions under division (I)(1)(b) of this section shall be retroactive to September 5, 1982, only if, as a condition for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311, the United States secretary of labor determines that retroactivity is required by federal law.

(c) With respect to weeks of unemployment beginning after December 31, 1977, benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess, if the individual performs any services described in divisions (I)(1)(a) and (b) of this section in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform any such services in the period immediately following the vacation period or holiday recess.

(d) With respect to any services described in division (I)(1)(a), (b), or (c) of this section, benefits payable on the basis of services in any such capacity shall be denied as specified in division (I)(1)(a), (b), or (c) of this section to any individual who performs such services in an educational institution or institution of higher education while in the employ of an educational service agency. For this purpose, the term "educational service agency" means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing services to one or more educational institutions or one or more institutions of higher education.

(e) Any individual employed by a public school district or a county board of developmental disabilities shall be notified by the thirtieth day of April each year if the individual is not to be reemployed the following academic year.

(2) No disqualification will be imposed, between academic years or terms or during a vacation period or holiday recess under this division, unless the director or the director's deputy has received a statement in writing from the educational institution or institution of higher education that the claimant has a contract for, or a reasonable assurance of, reemployment for the ensuing academic year or term.

(3) If an individual has employment with an educational institution or an institution of higher education and employment with a noneducational employer, during the base period of the individual's benefit year, then the individual may become eligible for benefits during the between-term, or vacation or holiday recess, disqualification period, based on employment performed for the noneducational employer, provided that the employment is sufficient to qualify the individual for benefit rights separately from the benefit rights based on school employment. The weekly benefit amount and maximum benefits payable during a disqualification period shall be computed based solely on the nonschool employment.

(J) Benefits shall not be paid on the basis of employment performed by an alien, unless the alien had been lawfully admitted to the United States for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was otherwise permanently residing in the United States under color of law at the time the services were performed, under section 212(d)(5) of the "Immigration and Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101 :

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence that the individual had not, in fact, been lawfully admitted to the United States.

(K) The director shall establish and utilize a system of profiling all new claimants under this chapter that:

(1) Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

(2) Refers claimants identified pursuant to division (K)(1) of this section to reemployment services, such as job search assistance services, available under any state or federal law;

(3) Collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimant's subsequent to receiving such services and utilizes such information in making identifications pursuant to division (K)(1) of this section; and

(4) Meets such other requirements as the United States secretary of labor determines are appropriate.

History. Amended by 128th General Assembly ch. 7, SB 79, §1, eff. 10/6/2009.

Effective Date: 12-23-2003; 09-05-2005

Archive

**Robertson v. Director, Ohio Dept. of Jobs & Family Services, 2006-Ohio-3349,
No. 86898 (OHCA8)**

2006-Ohio-3349

MARIKA ROBERTSON Plaintiff-appellant

v.

DIR., OHIO DEPT. JOB & FAMILY SERVICES, ET AL. Defendants-appellees

No. 86898

Court of Appeals of Ohio, Eighth District, Cuyahoga

June 29, 2006

Civil appeal from the Court of Common Pleas Case No. CV-550802

For Plaintiff-Appellant: HERMAN EDWARD GREGORY, ESQ.

For Defendants-Appellees: PATRICK MACQUEENEY, ESQ. ASST. ATTORNEY GENERAL

JOURNAL ENTRY AND OPINION

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ANN DYKE, A.J.:

{¶ 1} Plaintiff-Appellant, Marika Robertson ("Plaintiff"), appeals the trial court's affirmance of the Ohio Unemployment Compensation Review Commission's decision denying her unemployment benefits. For the following reasons, we affirm.

{¶ 2} Appellant was employed as a security officer by Inter-Con Security Systems Holding Corporation ("ICSS") from May 15, 2003 until April 19, 2004. At the time she was hired, she was aware that she needed to obtain a security officer license in order to continue her employment with ICSS.

{¶ 3} On January 16, 2004, the Ohio Department of Commerce ("ODC") sent ICSS a letter stating in part:

{¶ 4} "The Division of Real Estate and Professional Licensing has begun its review of the registration application submitted by **Marika Robertson**. The Division has obtained a report from the Ohio Bureau of Criminal Identification and Investigation ("BCII") which states that the registration applicant was discharged with **felonious assault, Arrest number(s) 200321078, Ohio Revised Code Chapter(s) 2903.11, on June 12, 2003, in Cuyahoga County, Ohio**. The BCII report, however, does not indicate the final disposition of the charge(s). In order to complete its review of the registration application, the Division must determine whether or not the registration applicant has been convicted on a felony charge within the last twenty (20) years.

{¶ 5} "The Division requires that final dispositions not stated on the rap sheets must be on the record. **The Division also requires final disposition for all misdemeanor charges.** Please make note that misdemeanor charges can be heard in both Courts, Municipal and Common Pleas. Felony charges are only heard in Common Pleas Court. At least one charge listed above is a felony charge.

{¶ 6} "A copy of the official Certified Journal Entry from the Clerk of Courts Office of the county in which the charge(s) was filed with the final disposition stated, along with the signature of the presiding Judge is required. Any other document from the Court with the signature of the Judge and final

disposition of the charge(s) in question stated on it will also be acceptable. *If the documents is not signed by a Judge, it is not acceptable.* (Emphasis in original.)

{¶ 7} Appellant provided ICSS with the following documents: a case Disposition Request Form from the Cleveland Municipal Clerk of Courts dated February 12, 2004 that indicated that there was no information on file regarding the June 13, 2004 arrest for felonious assault; a Cleveland Division of Police General Records Division form dated February 12, 2004 indicating "6-12-2003 Released - Felonious assault"; and two Cleveland Municipal Court Journals showing the final disposition of two criminal cases, none of which dealt with Appellant's alleged felonious assault charge. Appellant, however, did not provide ICSS with documents from the Cuyahoga County Court of Common Pleas. ICSS, nevertheless, forwarded the documents provided by Appellant to the ODC.

{¶ 8} On March 5, 2004, the ODC sent another letter to ICSS stating that the documents provided were insufficient. The letter stated in part:

{¶ 9} **"* * * *We still need the following information:***

{¶ 10} **"A copy of the official Certified Journal Entry for the felonious assault charge dated June 12, 2003 in Cleveland, Ohio. The documentation you submitted is not sufficient.**

{¶ 11} **"In cases where you are unable to locate any record of the stated charge(s), you must provide a letter from the clerk of courts office that specifically states 'no record found'." (Emphasis in original).**

{¶ 12} The letter further provided that failure to provide such documentation within ten days would result in the ODC denying the Appellant's registration for the security license.

{¶ 13} ICSS informed Appellant of the letter and indicated that she should go to the Common Pleas Court to obtain the necessary documentation regarding the alleged felony charge. Appellant failed to comply with ICSS's and ODC's request to provide documentation for the Common Pleas Court, and instead, provided another letter dated March 18, 2004 from the Cleveland Municipal Clerk of Courts indicating that Appellant had no record of a charge for felonious assault in that court, as well as a document from the Cleveland Police Department not mentioning any charges of felonious assault being filed against Appellant. As a result, Appellant was discharged when the ODC denied her application for a security officer license as a result of her inability to produce the requested documents.

{¶ 14} Following her discharge, Appellant filed an application for unemployment compensation benefits on April 19, 2004. The Director of the Ohio Department of Jobs and Family Services ("Director") determined Appellant was discharged from ICSS without just cause in connection with work and allowed her claim for unemployment compensation for the week ending April 24, 2004.

{¶ 15} ICSS timely appealed the Director's determination and on June 10, 2004, the Director issued a Redetermination which affirmed the original determination.

{¶ 16} ICSS appealed the Redetermination on July 1, 2004 and the case was transferred to the Ohio Unemployment Compensation Review Commission ("the Commission"). On September 27, 2004, a telephone hearing was held and Appellant failed to appear, claiming difficulties with her telephone service. The Commission reversed the Director's Redetermination on October 22, 2004 and determined that, as a result of Appellant's failure to provide the requested documentation from the Common Pleas Court, she was terminated with just cause and not entitled to unemployment compensation benefits.

{¶ 17} Appellant timely appealed the Commission's decision. In her appeal, Appellant explained the steps she took to comply with ICSS's and ODC's request for documentation regarding her felony record, as well as provided her reasons for her absence at the September 27, 2004 telephone hearing. The Commission issued its Decision Disallowing Request for Review on December 2, 2004.

{¶ 18} Appellant timely appealed to the Cuyahoga County Court of Common Pleas, which affirmed the Commission's Decision. Appellant now appeals to this court, asserting only one assignment of error for our review. Her sole assignment of error states:

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{¶ 19} "The court of common pleas erred in affirming the decision of the Unemployment Compensation Review Commission whose decision to reverse the Ohio Department of Job and Family Services Director's allowance of unemployment compensation benefits to Marika Robertson, was unlawful, unreasonable and against the manifest weight of the evidence pursuant to R.C. 4141.282(H). (Judgment Entry filed July 22, 2005)."

{¶ 20} Appellant appeals the trial court's affirmance of the Commission's decision denying her unemployment benefits. Finding no merit to this appeal, we affirm.

{¶ 21} A reviewing court may only reverse a decision of the unemployment compensation board of review if the decision is unlawful, unreasonable or against the manifest weight of the evidence. R.C. 4141.282(H); *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 1995-Ohio-206, 653 N.E.2d 1207, paragraph one of syllabus; *Irvine v. Unemp. Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 482 N.E.2d 587. Thus, this court is not permitted to make factual findings or determine the credibility of witnesses. *Tzangas*, supra; *Irvine*, supra. We may only determine whether the Commission's decision is supported by the evidence in the record. Id. "The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. * * * Where the board might reasonably decide either way, the courts have no authority to upset the board's decision." *Irvine*, supra at 18. Consequently, if the evidence is supported by competent, credible evidence, we must affirm the Commission's decision. *MacMillan v. Flow Polymers, Inc.*, Cuyahoga App. Nos. 83197, 83203, 2004-Ohio-1252.

{¶ 22} Pursuant to R.C. 4141.29(D)(2)(a), a claimant is not eligible for unemployment compensation benefits if the claimant quit without just cause, or if the claimant was discharged for just cause. "Just cause" means "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine*, supra at 17. Just cause determinations must be consistent with the legislative purpose of the Unemployment Compensation Act, to provide financial assistance to individuals who become unemployed through no fault of their own. Id.

{¶ 23} In the instant action, a review of the record reveals that there existed competent, credible evidence from which the Commission could determine that Appellant was discharged for just cause. In making its determination, the Commission found that Appellant failed to provide her employer with the requested and necessary documentation regarding her reported felony charge. The Commission noted that Appellant had provided her employer with documentation from the Municipal Court stating that the court had no record of any felony charges associated with Appellant. She, however, had failed to present the documentation from the Common Pleas court even after her employer had indicated to Appellant to go to the Common Pleas Court, not the Municipal Court, to get the necessary documentation regarding the reported felony charge. Therefore, since Appellant admittedly has failed to acquire documentation from the Common Pleas Court stating that it had no record of any felony charges associated with Appellant after her employer informed her to do so, Appellant was at fault for not obtaining her security license that she knew she needed to continue her employment with ICSS. Accordingly, we find that there was competent, credible evidence to support the Commission's conclusion that Appellant was discharged for just cause. Appellant's sole assignment of error is without merit.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, J., CONCURS. (SEE ATTACHED CONCURRING OPINION) MARY EILEEN KILBANE, J., DISSENTS. (SEE ATTACHED DISSENTING OPINION)

CONCURRING OPINION

SEAN C. GALLAGHER, J., CONCURRING:

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{¶ 24} I concur with the majority analysis and opinion. I am sensitive to the views expressed by Judge Kilbane in her thoughtful dissent outlining the good faith effort of Robertson to obtain a simple public document. Robertson's efforts, unfortunately, do not invalidate the trial court's finding that she was discharged for just cause.

{¶ 25} The trial court's determination was predicated on Robertson's failure to secure a license. It was not based on the failure of various administrative agencies to provide Robertson the record she requested. The license was a prerequisite to her further employment.

{¶ 26} An appellate court cannot substitute its judgment for that of the common pleas court except within its limited statutory scope of review and is to determine only if the common pleas court abused its discretion. *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 2000-Ohio-493, quoting *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34.

{¶ 27} Where administrative appeals are concerned, an appellate court must affirm the decision of the common pleas court unless it finds, as a matter of law, that the decision is not supported by a preponderance of reliable, probative, and substantial evidence. In this instance, Robertson did not have a license and, thus, she was discharged for good cause.

{¶ 28} This action is not a review of the failure of certain public agencies to provide Robertson with the appropriate documentation relating to her arrest. Had this been a mandamus action to compel the governmental agencies to act, the result might well have been different.

DISSENTING OPINION

MARY EILEEN KILBANE, J., DISSENTING:

{¶ 29} I respectfully dissent from the majority's opinion as to the single assignment of error as I believe the decision of the Unemployment Compensation Review Commission ("UCRC") disallowing unemployment compensation benefits to Marika Robertson ("Robertson") was unlawful, unreasonable, and against the manifest weight of the evidence pursuant to R.C. 4141.282(H).

{¶ 30} As the majority opinion correctly states, "[p]ursuant to R.C. 4141.29(D)(2)(a), a claimant is not eligible for unemployment compensation benefits if the claimant quit without just cause, or if the claimant was discharged for just cause. 'Just cause' means 'that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act.'" *Irvine, supra*; *Tzangas, Plakas & Mannos, v. Administrator, Ohio Bureau of Employment Servs.*, 73 Ohio St.3d 694, 1995-Ohio-206; *Warrensville Heights v. Jennings*, (1991), 58 Ohio St.3d 206; *Shephard v. Dir., Ohio Dep't of Job & Family Servs.* (May 11, 2006), Cuyahoga App. No. 86518, 2006-Ohio-2313. In the present case, I find that no competent, credible evidence exists to support the UCRC's decision that Robertson was fired for just cause.

{¶ 31} The evidence in the record contained numerous statements from Robertson as well as numerous court documents from the Cleveland Municipal Clerk of Court's office, the Cleveland Police Department, and the Cuyahoga County Sheriff's Office, all stating that no felony record exists. Robertson clearly enunciated in her letters contained in the record, that she attempted to locate the required certified journal entry in both the Cleveland Municipal Court Clerk's office as well as the Cuyahoga County Clerk of Court's office. Robertson explained that when she attempted to get the required documents from the Common Pleas Clerk of Court's office she was informed that she was not in their system and that there was nothing they could give her to prove this.

{¶ 32} Accordingly, Robertson made an extreme good faith effort to comply with the demands of her employer, Inter-Con Security Systems Holding Corporation, as well as the requirements of the Ohio Department of Commerce. Robertson cannot be expected to prove something that does not exist.

{¶ 33} Cleveland Police arrested Robertson on June 12, 2003 for contempt of court and felonious assault. However, no charges were ever filed concerning the arrest for felonious assault. As stated by Robertson in her appellate brief, even if a complaint for felonious assault has been filed by the arresting officer, her initial appearance would have occurred in Cleveland Municipal Court, not the Court of Common Pleas. Moreover, no Cleveland Municipal Court conducted a preliminary hearing, Robertson never waived a preliminary hearing, and no court ever bound Robertson over to Cuyahoga County Court of Common Pleas. Accordingly, the court with proper jurisdiction over the felonious assault

arrest was the Cleveland Municipal Court. Therefore, Robertson complied with the Ohio Department of Commerce's request when she provided a letter from the Clerk of Court's office stating "no record found."

{¶ 34} Moreover, when this matter was initially heard by the Department of Job and Family Services, the hearing officer determined that there was not enough fault on Robertson's part and found in her favor. The employer appealed but the Director's Redetermination affirmed the original determination in Robertson's favor.

{¶ 35} I find the Ohio Department of Commerce's instructions regarding where felony and misdemeanor records are located to be misleading. Though true on their face, as illustrated above, when an individual is arrested for a felony but never charged, no record will exist in the Common Pleas Clerk of Courts as that individual would never have been bound over to the Court of Common Pleas.

{¶ 36} Based on the above, I find that Robertson made a good faith effort to comply with requirements of her employer and the Ohio Department of Commerce. Robertson made numerous attempts to acquire a document that did not exist and all the while, provided the parties with documentation showing that she does not have a felony conviction. An ordinary, intelligent person in the same situation as Robertson would be justified in conducting himself or herself in the same manner. Therefore, Robertson should not be to blame for the Ohio Department of Commerce's failure to issue her a private security license. Because Robertson should not be blamed for failing to obtain a license, I believe that her employer had no just cause for her termination. Accordingly, I find that the UCRC's decision to disallow Robertson's unemployment compensation benefits is unlawful, unreasonable and against the manifest weight of the evidence.

{¶ 37} For the abovementioned reasons, I would reverse the decision of the trial court and remand for actions consistent with this opinion.

Not Reported in N.E.2d, 1985 WL 9390 (Ohio App. 4 Dist.)
(Cite as: 1985 WL 9390 (Ohio App. 4 Dist.))

Only the Westlaw citation is currently available.

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio, Fourth District, Scioto
County.

BRET A. WILLIAMS, Plaintiff-Appellant
v.

SECURITY ARMORED CAR SERVICES, INC.,
ET AL., Defendant-Appellees
CASE NO. 1531.

1531

July 12, 1985.

COUNSEL FOR APPELLANT: N. Robert Grillo,
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Mound Street, Columbus, Ohio 43223.

OPINION & JUDGMENT ENTRY

ABELE, J.

*1 This is an appeal from a Scioto County Common Pleas Court judgment affirming a decision of the Ohio Unemployment Compensation Board of Review. Appellant originally filed an application for benefits beginning December 19, 1982. He filed an additional application for benefits beginning September 3, 1983, after his employment with Appellee Security Armored Car Services of St. Louis, Missouri ended.

Appellant worked for the company from July 1,

1983, through August 26, 1983, as a truck driver. When he was hired, the company told him to obtain a Missouri chauffeur's license. Appellant claims he made every reasonable effort to obtain the license, but failed due to his financial circumstances and inability to procure a car to use during the driving test. Appellant admits both the company's insurance carrier and Missouri law require a chauffeur's license for the job.

The Board of Review Referee found in pertinent part:

"Claimant's failure to obtain said license was not in the best interests of his employer. Therefore, the Referee must conclude that claimant was discharged by Security Armored Car Services for just cause in connection with work."

The Court below rejected Appellant's argument that "the correct test for discharge for "just cause" or "misconduct" is whether the claimant was discharged due to his/her own culpability rather than circumstances beyond his/her control." The Court held the question is not whether Appellant acted reasonably, the question is whether the employer acted reasonably.

We affirm.

ASSIGNMENT OF ERROR I

"THE COURT OF COMMON PLEAS ERRED IN FAILING TO RULE THAT THE CORRECT TEST FOR DISCHARGE WAS NOT USED BY THE REFEREE IN THIS CASE."

Ohio Revised Code Section 4141.29 (D)(2)(a) provides in pertinent part:

(D) ...no individual may...be paid benefits under the following conditions:

(2) ...

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Not Reported in N.E.2d, 1985 WL 9390 (Ohio App. 4 Dist.)
(Cite as: 1985 WL 9390 (Ohio App. 4 Dist.))

(a) He quit his work without just cause or has been discharged for just cause in connection with his work..."

Section 4141.29 (D)(2)(a) contains two "just cause" phrases. The first phrase "He quit his work without just cause" refers to "just cause" from the employee's perspective. The second phrase "(He) has been discharged for just cause" refers to "just cause" from the employer's perspective.

In Peyton v. Sun T.V. (1975) 44 O.App. 2d 10, the Court wrote:

"There is, of course, not a slide rule definition of just cause. Essentially, each case must be considered upon its particular merits. Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act."

Peyton involved an employee who quit his work. The Peyton Court had to decide whether the employee acted as an "ordinarily intelligent person" when deciding to quit his work.

The case at bar, however, involves an employer who discharged an employee. The Board of Review's Referee had to decide whether the employer acted as an "ordinarily intelligent person" when deciding to discharge Appellant. Section 4141.29 (D)(2)(a) protects employers by forbidding benefits to those employees who, due to circumstances beyond the control of the employer, are unable to meet obligations of the job. Appellant's difficulties do not excuse his failure to obtain a Missouri chauffeur's license as required by his employer, his employer's insurance carrier, and Missouri law.

*2 We have reviewed the record below and find the Board of Review's decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

Appellant's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

"THE COURT OF COMMON PLEAS ERRED IN FAILING TO RULE THAT THE DENIAL BY THE BOARD OF APPELLANT'S CLAIM FOR UNEMPLOYMENT BENEFITS WAS UNLAWFUL, UNREASONABLE, AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. (O.R.C. 4141.28 (O))."

Appellant contends the Court applied the Ohio Revised Code Section 119.12 standard when reviewing the case. While the Court referred to both Section 119.12 and Section 4141.28 in its decision, the judgment entry clearly reflects the Court used the Section 4141.28(O) standard of review. Section 4141.28 (O) provides in pertinent part:

"If the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse and vacate such decision or it may modify such decision and enter final judgment in accordance with such modification; otherwise such court shall affirm such decision."

The Court wrote "the decision was not unlawful, unreasonable, or contrary to the manifest weight of the evidence."

Appellant's second assignment of error is overruled.

JUDGMENT AFFIRMED

Grey, J.: Concur in Judgment & Opinion
Stephenson, P.J.: Concur in Judgment with opinion.
It is ordered that (appellee) recover of (appellant) their costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Not Reported in N.E.2d, 1985 WL 9390 (Ohio App. 4 Dist.)
(Cite as: 1985 WL 9390 (Ohio App. 4 Dist.))

NOTICE TO COUNSEL

Pursuant to Local Rule No. 9, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

Stephenson, P.J., - Concurring In Judgment Only:

While I concur in the judgment of affirmance under the facts of this case, I dissent from the opinion insofar as it holds employee fault irrelevant in a discharge for just cause adjudication. See Sellers v Board of Review (1981), 1 Ohio App. 3d 161.

I would also note that the opinion of the trial court erroneously adopts the R.C. 119.12 standard of review, i.e., whether there was reliable, probative and substantial evidence to support the Board order. The reason application of such standard is error is that a R.C. 119.12 appeal is hybrid and is neither strictly one of law or law and fact. In unemployment compensation appeals the appeal is solely one of law with the standard of review being whether the decision was unlawful, unreasonable or against the manifest weight of the evidence. Even though the court's opinion applies the wrong standard the judgment entry, apparently prepared by counsel, applies the correct standard. Hence, my concurrence in the judgment.

Ohio App., 1985.

Williams v. Security Armored Car Services, Inc
Not Reported in N.E.2d, 1985 WL 9390 (Ohio App. 4 Dist.)

END OF DOCUMENT

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